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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 16th December, 1985:—

BILL No. 206 OF 1985

A Bill further to amend the Central Excises and Salt Act, 1944.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Central Excises and Salt (Amendment) Act, 1985.

1 of 1944.

Insertion of new section 9AA.

2. In the Central Excises and Salt Act, 1944 (hereinafter referred to as the principal Act), after section 9A, the following section shall be inserted, namely:—

Offences by companies.

'9AA. (*1*) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.'.

Amendment of section 11A.

3. In section 11A of the principal Act,—

(a) in sub-section (1), in the proviso, for the words "as if", the words 'as if for the words "Central Excise Officer", the words "Collector of Central Excise", and' shall be substituted;

(b) in sub-section (2), for the words "The Assistant Collector of Central Excise", the words "The Assistant Collector of Central Excise or, as the case may be, the Collector of Central Excise" shall be substituted.

Insertion of new section 12A.

4. In Chapter III of the principal Act, before section 13, the following section shall be inserted, namely:—

Powers of Central Excise Officers.

"12A. (1) A Central Excise Officer may exercise the powers and discharge the duties conferred or imposed under this Act on any other Central Excise Officer who is subordinate to him.

(2) Notwithstanding anything contained in sub-section (1), the Collector of Central Excise (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on a Central Excise Officer other than those specified in section 14 or Chapter VIA.".

Amendment of section 35D.

5. In section 35D of the principal Act, in sub-section (2), for the words "three members", the words "two members" shall be substituted.

Amendment of section 37.

6. In section 37 of the principal Act, in sub-section (2), after clause (*xxi*), the following clause shall be inserted, namely:—

"(*xxii*) provide for the charging of fees for the examination of excisable goods intended for export out of India and for rendering any other service by a Central Excise Officer under this Act or the rules made thereunder.".

Insertion of new sections 37B and 37C.

7. After section 37A of the principal Act, the following sections shall be inserted, namely:—

Instructions to Central Excise Officers.

"37B. The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise 54 of 1963

on such goods, issue such orders, instructions and directions to the Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the said Board:

Provided that no such orders, instructions or directions shall be issued—

(*a*) so as to require any Central Excise Officer to make a particular assessment or to dispose of a particular case in a particular manner; or

(*b*) so as to interfere with the discretion of the Collector of Central Excise (Appeals) in the exercise of his appellate functions.

Service of decisions orders, summons, etc.

37C. (*1*) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served,—

(*a*) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due, to the person for whom it is intended or his authorised agent, if any;

(*b*) if the decision, order, summons or notice cannot be served in the manner provided in clause (*a*), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;

(*c*) if the decision, order, summons or notice cannot be served in the manner provided in clauses (*a*) and (*b*), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post or a copy thereof is affixed in the manner provided in sub-section (*1*).".

Transfer of certain pending proceedings.

8. Every proceeding under the proviso to sub-section (*1*) of section 11A of the principal Act, which is pending immediately before the commencement of this Act before an Assistant Collector of Central Excise and any matter arising out of, or connected with, such proceeding and which is so pending shall stand transferred on such commencement to the Collector of Central Excise who may proceed with such proceeding or matter from the stage at which it was on such commencement or from any earlier stage as he may deem fit:

Provided that any party to the proceeding or matter may demand that before proceeding further with the proceeding or matter, he may be re-heard.

STATEMENT OF OBJECTS AND REASONS

The Central Excises and Salt Act, 1944 provides for the levy and collection of duties of excise on all excisable goods specied in the First Schedule to that Act. The Central Excise Rules, 1944 have been made under section 37 of the Act. The said rules, *inter alia*, provide for the charging of fees for the inspection of excisable goods intended for export out of India and for any other service rendered by the Central Excise Officers. The rules also provide for the service of decisions, orders, etc., under the Act or the rules made thereunder. The Committee on Subordinate Legislation of the Lok Sabha have observed that there is no enabling power in the Act to charge fees for services rendered by the Central Excise Officers and that the provisions for service of any decisions, orders, summons or notices issued under the Act or the rules made thereunder should be provided for in the Act instead of in the rules. It is proposed to accept the recommendations of the Committee and make suitable amendments in the Act.

2. Opportunity is also being availed of to make certain other amendments in the Act in the light of the experience gained in the implementation of the Act. The main amendments proposed are as follows:—

(*a*) show cause notice in regard to duty of excise short-levied or short-paid, etc., by reason of fraud, collusion or any wilful misstatement or suppression of facts should be issued, and such cases decided, by the Collector of Central Excise instead of the Assistant Collector of Central Excise as at present;

(*b*) power is proposed to be given to the Central Board of Excise and Customs to issue instructions to the Central Excise Officers for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods.

3. The Bill seeks to achieve the above objects.

NEW DELHI; VISHWANATH PRATAP SINGH.

The 6th December, 1985.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. F4|4|85-CX-1, dated the 6th December, 1985 from Shri Vishwanath Pratap Singh, Minister of Finance to the Secretary-General, Lok Sabha.]

The President having been informed of the subject matter of the Bill further to amend the Central Excises and Salt Act, 1944, recommends under Clause (1) of Article 117 of the Constitution of India the introduction of the above Bill in the Lok Sabha.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 6 of the Bill seeks to amend sub-section (2) of section 37 of the Central Excises and Salt Act, 1944 to insert a new clause so as to enable the Central Government to make rules to provide for the charging of fees for the examination of excisable goods intended for export and for rendering any other service by a Central Excise Officer under the Act or the rules. The matters in respect of which rules may be made are matters of administrative nature and detail. The delegation of legislative power is, therefore, of a normal character.

BILL No. 207 OF 1985

A Bill further to amend the Customs Act, 1962.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Customs (Amendment) Act, 1985.

52 of 1962.

Amendment of section 20.

2. In section 20 of the Customs Act, 1962 (hereinafter referred to as the principal Act), in sub-section (*1*), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that if the Central Government is satisfied that it is necessary in the public interest so to do, it may, by order in each case, extend the aforesaid period of three years for such further period as it may deem fit.".

Amendment of section 28.

3. In section 28 of the principal Act,—

(*a*) in sub-section (*1*), in the proviso, for the words "as if", the words 'as if for the words "proper officer", the words "Collector of Customs", and' shall be substituted;

(*b*) in sub-section (*2*), after the words "Assistant Collector of Customs", the words "or the Collector of Customs, as the case may be" shall be inserted,

Amendment of section 48.

4. In section 48 of the principal Act, for the words "within two months", the words "within forty-five days" shall be substituted.

Amendment of section 61.

5. In section 61 of the principal Act, in sub-section (*1*), for clause (*a*), the following shall be substituted, namely:—

'(*a*) in the case of—

(*i*) non-consumable stores; or

(*ii*) goods intended for supply to a foreign diplomatic mission; or

(*iii*) goods intended for use in any manufacturing process or other operations in accordance with the provisions of section 65; or

(*iv*) goods intended for use in any hundred per cent. export-oriented undertaking; or

(*v*) goods which the Central Government may, if it is satisfied that it is necessary or expedient so to do, by notification in the Official Gazette, specify for the purposes of this clause,

till the expiry of one year.

Explanation.—For the purposes of sub-clause (*iv*), "hundred per cent. export-oriented undertaking" has the same meaning as in *Explanation 2* to sub-section (*1*) of section 3 of the Central Excises and Salt Act, 1944;'. 1 of 1944.

Amendment of section 74.

6. In section 74 of the principal Act, in sub-section (*1*), in the opening paragraph, for the portion beginning with the words "any duty has been paid" and ending with the words "be re-paid as drawback, if—", the following shall be substituted, namely:—

"any duty has been paid on importation,—

(*i*) are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51; or

(*ii*) are to be exported as baggage and the owner of such baggage, for the purpose of clearing it, makes a declaration of its contents to the proper officer under section 77 (which declaration shall be deemed to be an entry for export for the purposes of this section) and such officer makes an order permitting clearance of the goods for exportation, or

(*iii*) are entered for export by post under section 82 and the proper officer makes an order permitting clearance of the goods for exportation,

ninety-eight per cent. of such duty shall, except as otherwise hereinafter provided, the re-paid as drawback, if—".

Amendment of section 75.

7. In section 75 of the principal Act, in sub-section (*1*), after the words "proper officer", the words "or being goods entered for export by post under section 82 and in respect of which an order permitting clearance for exportation has been made by the proper officer" shall be inserted and shall be deemed to have been inserted with effect from the 13th day of May, 1983.

Amendment of section 110.

8. In section 110 of the principal Act, after sub-section (*1*), the following sub-sections shall be inserted, namely:—

"(*1A*) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (*1*), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

(*1B*) Where any goods, being goods specified under sub-section (*1A*), have been seized by a proper officer under sub-section (*1*), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceeding under this Act and shall make an application to a Magistrate for the purpose of—

(*a*) certifying the correctness of the inventory so prepared; or

(*b*) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or

(*c*) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

(*1C*) Where an application is made under sub-section (*1B*), the Magistrate shall, as soon as may be, allow the application.".

Amendment of section 125.

9. In section 125 of the principal Act,—

(*a*) in sub-section (*1*), after the words "the owner of the goods", the words "or, where such owner is not known, the person from whose possession or custody such goods have been seized," shall be inserted;

(*b*) for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) Where any fine in lieu of confiscation of goods is imposed under sub-section (*1*), the owner of such goods or the person referred to in sub-section (*1*) shall, in addition, be liable to any duty and charges payable in respect of such goods.".

Amendment of section 129C.

10. In section 129C of the principal Act,—

(*a*) in sub-section (*3*), for the words "three members", the words "two members" shall be substituted;

(*b*) to sub-section (*5*), the following proviso shall be added, namely:—

"Provided that where the members of a Special Bench are equally divided, the point or points on which they differ shall be decided by the President.".

Amendment of section 139.

11. In section 139 of the principal Act, the following *Explanation* shall be inserted at the end, namely:—

'*Explanation.*—For the purposes of this section, "document" includes inventories, photographs and lists certified by a Magistrate under sub-section (*1C*) of section 110.'.

Insertion of new section 151A.

12. After section 151 of the principal Act, the following section shall be inserted, namely:—

Instructions to officers of customs

"151A. The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of goods or with respect to the levy of duty thereon, issue such orders, instructions and directions to officers of customs as it may deem fit and such officers of customs and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:

Provided that no such orders, instructions or directions shall be issued—

(*a*) so as to require any such officer of customs to make a particular assessment or to dispose of a particular case in a particular manner; or

(*b*) so as to interfere with the discretion of the Collector of Customs (Appeals) in the exercise of his appellate functions.".

Transfer of certain pending proceedings.

13. Every proceeding under the proviso to sub-section (*1*) of section 28 of the principal Act, which is pending immediately before the commencement of this Act before an Assistant Collector of Customs and any matter arising out of, or connected with, such proceeding and which is so pending, shall stand transferred on such commencement to the Collector of Customs who may proceed with such proceedings or matter from the stage at which it was on such commencement or from any earlier stage as he may deem fit:

Provided that any party to the proceeding or matter may demand that before proceeding further with the proceeding or matter, he may be re-heard.

Validation.

14. (*1*) Any drawback allowed under section 75 of the principal Act on goods exported by post during the period commencing on and from the 13th day of May, 1983 and ending with the date of commencement of this Act shall be deemed to have been validly allowed as if the provisions of the said section, as amended by section 7 of this Act, had been in force at all material times.

(*2*) Any person whose claim for drawback on goods exported by post under section 75 of the principal Act during the period commencing on and from the 13th day of May, 1983 and ending with the date of commencement of this Act was disallowed on the ground that the principal Act did not provide for any such allowance, may, within ninety days from such commencement, apply to the proper officer for reconsideration of the matter and such proper officer shall decide such claim as if the provisions of section 75 of the principal Act, as amended by section 7 of this Act, had been in force on the date on whch such goods were so exported.

STATEMENT OF OBJECTS AND REASONS

The Customs Act, 1962 (52 of 1962), provides for the levy of duties of customs. It is proposed to make certain amendments to the Act so as to remove certain practical difficulties experienced in the administration of the Act.

2. The Bill provides, among other things, for the following amendments, namely:—

(i) section 20 of the Act provides for the re-importation of goods produced or manufactured in India free of duty if such importation takes place within three years of their export. It is proposed to amend this section to enable the Central Government to extend the said period of three years in certain cases in the public interest;

(ii) section 28 of the Act empowers the proper officer to serve notice on the person chargeable with the duty for payment of duties not levied, short-levied or erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or his agent or employees within a period of five years from the relevant date as defined in the section. The Assistant Collector of Customs then determines the amount due from the concerned person. In order to ensure a more judicious exercise of this power, it is proposed to suitably amend this section to provide that this power is exercised by the Collector of Customs;

(iii) section 48 of the Act provides for the procedure for the sale of goods if they are not cleared, warehoused or transhipped within two months after their unloading. It is proposed to reduce this period to forty-five days;

(iv) section 61 deals with the period for which the goods may remain warehoused without payment of interest on the amount of duty payable. It is proposed to suitably amend this section to provide for a longer warehousing period without payment of interest in respect of some more categories of goods;

(v) section 74 provides for allowing drawback on the export of goods in respect of which duty has been paid on the importation thereof. It is proposed to suitably amend this section so as to allow such drawback also on goods exported as baggage or by post;

(vi) section 75 deals with drawback on imported materials used in the manufacture of goods which are exported. It is proposed to amend this section so as to allow such payment of drawback in the case of goods exported by post also retrospectively from the 13th day of May, 1983.

The provision for allowing drawback on goods exported by post which was in the Act originally got excluded from the 13th day of May, 1983 when an amendment was made to the relevant provisions.

In view of this, the amendment is proposed to be made retrospectively from that date and a necessary validating provision has also been included.

(vii) section 110 of the Act deals with the seizure of goods, documents and things. It is proposed to suitably amend this section to provide for the procedure to be adopted for the disposal of certain seized goods having regard to their perishable nature or depreciation in their value with the passage of time or other relevant circumstances;

(viii) section 125 provides for option to the owner of the goods to pay fine in lieu of confiscation thereof in addition to any duty and charges payable thereon. It is proposed to suitably amend this section so as to specifically provide that whenever any fine in lieu of confiscation of goods is imposed on any owner of the goods, such owner shall also be liable for duty and charges payable in respect of such goods. It is also proposed to clarify that in a case where the owner of the goods is not known, the person from whose possession or custody such goods are seized will be made responsible for the payment of the fine, duty and other charges;

(ix) section 129C provides for the procedure of the Appellate Tribunal constituted under the Act. With a view to providing facility for speedy disposal of appeals by Special Benches of the Appellate Tribunal, it is proposed to amend this section so as to enable the constitution of Special Benches of not less than two members instead of three members, as at present. It is also proposed to provide that in case of difference of opinion on any point among the members of any such Bench, the point shall be decided by the President of the Appellate Tribunal;

(x) It is proposed to take over power to enable the Central Board of Excise and Customs to issue orders or instructions to officers of customs in respect of classification of goods or of the levy of duty thereon for the purpose of achieving uniformity in respect of these matters.

3. The Bill seeks to achieve the above objects.

NEW DELHI; VISHWANATH PRATAP SINGH.

The 11th December, 1985.

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274 OF THE CONSTITUTION OF INDIA

[Copy of letter No. 492|6|85-CUS (VI), dated the 6th December, 1985 from Shri Vishwanath Pratap Singh, Minister of Finance to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the proposed Bill further to amend the Customs Act, 1962 recommends under clause (1) of article 117 of the Constitution, the introduction of the above Bill in Lok Sabha.

SUBHASH C. KASHYAP,
Secretary-General.

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